

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO**

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DMEA filed a Response to Tri-State's Motion for Extension of Time to Respond to Formal Complaint.

3. On December 28, 2018, the Commission issued Decision No. C18-1177-I granting DMEA's motion to hear the case *en banc*, requiring DMEA and Tri-State to file a joint procedural schedule by January 28, 2019, extending the deadline for Tri-State's response to DMEA's Formal Complaint to January 15, 2019, and setting a status conference for February 6, 2019.

4. Between January 4, 2019 and January 11, 2019, various entities filed petitions for intervention or motions to participate as *amicus curiae* in this proceeding:

Party Name	Filing Type	Date Filed
Sierra Club	Permissive Intervention or, in the alternative, <i>Amicus Curiae</i>	1/4/19
Mountain View Electric Association	Intervention as of Right or, in the alternative, Permissive Intervention	1/7/19
Poudre Valley Rural Electric Association	Permissive Intervention	1/7/19
San Luis Valley Rural Electric Cooperative	Permissive Intervention or, in the alternative, <i>Amicus Curiae</i>	1/8/19
White River Electric Association	Permissive Intervention	1/9/19
United Power, Inc.	Intervention as of Right or, in the alternative, for Permission to Intervene or to Participate as <i>Amicus Curiae</i>	1/9/19
Highline Electric Association, Y-W Electric Association, and Mountain Parks Electric, Inc.	<i>Amicus Curiae</i>	1/9/19
Joint Conservation Parties: Western Resource Advocates San Juan Citizens Alliance Southwest Energy Efficiency Project Vote Solar	<i>Amicus Curiae</i>	1/9/19
Nebraska Tri-State Members: Wheat Belt Public Power District Midwest Electric Cooperative Corporation	Permissive Intervention	1/9/19

Roosevelt Public Power District Chimney Rock Public Power District Panhandle Rural Electric Membership Association		
Joint Cooperative Movants: Southeast Colorado Power Association, Inc. High West Energy Wyrulec Company Big Horn Rural Electrical Company Carbon Power & Light Garland Light & Power K.C. Electric Association Otero County Electric Cooperative, Inc. Central New Mexico Cooperative Mora-San Miguel Electric Cooperative, Inc. Continental Divide Electric Cooperative Socorro Electric Cooperative Sierra Electric Cooperative, Inc. Gunnison County Electric Association, Inc. Southwestern Electric Cooperative Columbus Electric Cooperative Northern Rio Arriba Electric Cooperative, Inc. Wheatland Rural Electric Association Springer Electric Cooperative High Plains Power, Inc. Niobrara Electric Association, Inc. San Isabel Electric Association, Inc. Morgan Country Rural Electric Association	Permissive Intervention	1/11/19 (Amended)
Colorado Solar Energy Industries Association	<i>Amicus Curiae</i>	1/11/19

5. There are now 42 filing entities. There were initially 43, but one Tri-State member cooperative, San Miguel Power Association, appears to have been erroneously included by the Joint Cooperative Movants in their initial filing. The Joint Cooperative Movants amended their initial filing without explanation of the change.

6. These various entities articulate three different requests for relief: (1) requests to intervene as of right; (2) requests to intervene by permission; and (3) requests to participate as

amici curiae. Some request all three through alternative requests for relief, while others seek only permissive intervention or *amicus curiae* status.

RESPONSE

7. This Complaint involves a dispute between DMEA and Tri-State over a prescribed exit charge that Tri-State seeks to only apply to DMEA. While other entities and Tri-State member cooperatives may have incidental or policy interests in this case, Tri-State's obligations as a public utility under the Colorado Public Utilities Law (Articles 1 through 7 of Title 40, C.R.S.) are implicated in this Complaint by its specific application of the charge to DMEA. DMEA is acting on behalf of its member-owners who want just, reasonable, and nondiscriminatory treatment from Tri-State.

8. The Colorado Public Utilities Law provides that the Commission "shall conduct its proceedings in such manner as will best conduce the proper dispatch of business and the ends of justice."¹ As explained below, DMEA has no blanket objection to these entities' participation as *amici curiae*, but has concern that participation as intervenors will unnecessarily delay and add to the cost of adjudicating a just, reasonable, and nondiscriminatory exit charge. DMEA urges the Commission to keep in mind that the purpose of this proceeding is expeditious resolution of a dispute between two parties: DMEA and Tri-State.

9. DMEA believes none of the entities meet the Rule 1401(b) standard for an intervention as of right.² Interventions by right are generally limited to a subset of intervenors, *i.e.*, Trial Staff of the Commission, the Colorado Office of Consumer Counsel, and the Colorado

¹ § 40-6-101(1), C.R.S.

² Rule 1401(b) ("A notice of intervention as of right, unless filed by Commission staff, shall state the basis for the claimed legally protected right that may be affected by the proceeding. No decision shall be entered permitting intervention in response to a notice of intervention as of right.")

Energy Office (under certain circumstances). None of the petitions in this proceeding articulate an adequate “legally protected right that may be affected by the proceeding.”

10. The entities seeking permissive intervention generally rely on the notion that any DMEA exit from Tri-State may affect their respective rates and charges. But these Tri-State member cooperatives declined to participate as parties in the Tri-State Board Policy 316 process through which DMEA sought to exit Tri-State before coming to this Commission for relief under the Colorado Public Utilities Law. Indeed, only a handful of cooperatives commented in the Board Policy 316 process (with the majority favoring DMEA). But just one member cooperative, La Plata Electric Association, Inc., a Tri-State member cooperative that has not made any filings in this proceeding to date, chose to participate in the process, and no member cooperative seeking to intervene in this proceeding participated in the Board Policy 316 process as a party. Nevertheless, these same member cooperatives now petition to intervene as parties before this Commission as it adjudicates a just, reasonable, and nondiscriminatory exit charge.

11. This failure to participate in the Board Policy 316 process as parties suggests the Tri-State member cooperatives seeking to intervene are concerned with *who* is making the decision on the exit charge as opposed to the exit charge itself. The issue of who is the appropriate decision-maker is a jurisdictional question and a question of law that does not require the Commission to confer intervenor status broadly to all comers and convert a two-party complaint proceeding into a proceeding with numerous intervenors.

12. Given the request for relief and alternative requests for relief filed by the various entities, DMEA believes treating all Tri-State member cooperatives as *amici curiae* makes the most sense and best serves administrative economy, while still providing the Commission with a full picture of this dispute. The Joint Conservation Parties, Sierra Club, and COSEIA should be

granted this same *amicus curiae* status. This approach allows the prospective parties to weigh in on questions of law, including any question of Commission jurisdiction, while allowing the proceeding to remain what it is—a dispute between Tri-State and DMEA as to whether the exit charge prescribed by Tri-State is just, reasonable, and nondiscriminatory as required by the Colorado Public Utilities Law.

WHEREFORE, DMEA respectfully requests that the Commission grant all third parties *amicus curiae* status in this proceeding.

DATED this 17th day of January 2019.

Respectfully submitted,

/s/ Matthew S. Larson

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**ATTORNEYS FOR DELTA-MONTROSE
ELECTRIC ASSOCIATION**

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of January 2019, a copy of the foregoing **RESPONSE TO PETITIONS TO INTERVENE AND MOTIONS FOR LEAVE TO PARTICIPATE AS *AMICUS CURIAE*** was filed with the Colorado Public Utilities Commission via e-file and a copy was served via e-mail to the following:

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